

LE COPY

Office Supreme Court, U.S.

FILED

APR 14 1961

JAMES R. BROWNING, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 81

TEXACO INC., Petitioner

v.

**THE SUPERIOR COURT OF THE STATE OF DELAWARE IN
AND FOR NEW CASTLE COUNTY, AND THE HONORABLE
ANDREW D. CHRISTIE, sitting as a Judge of that
Court, Respondents**

and

CITIES SERVICE GAS COMPANY, Intervening Respondent

On Writ of Certiorari to the Supreme Court of the
State of Delaware

**REPLY BRIEF OF PETITIONER TEXACO INC. TO BRIEF
FOR CITIES SERVICE GAS COMPANY**

**JOHN J. WILSON
FRANK H. STRICKLER
815 Fifteenth Street, N. W.
Washington 5, D. C.**

**PAUL F. SCHLESINGER
135 East 42nd Street
New York 17, New York**

**ALFRED C. DeCRANE, Jr.
P. O. Box 2332
Houston 1, Texas**

Attorneys for TEXACO, Inc.

INDEX

	Page
Introductory Statement	2
I. The issues on review include the level of the filed rates, the necessity to exhaust administrative remedies and the exclusive jurisdiction of the federal Courts of Appeals under Section 19 of the Act	3
II. Section 19 and Section 22 of the Act deprives the state court of jurisdiction of Cities' claims	10
A. The jurisdictional theory of the Delaware Courts erroneously assumes that state courts have jurisdiction to modify or set aside final orders of the Federal Power Commission	10
B. The purpose or effect of an action, not its form, determines whether federal District Courts have exclusive jurisdiction ..	13
III. The Commission's actions established a specific unconditional filed rate of 11 cents per Mcf	15
A. In its rate filing orders the Commission has emphasized the 11 cents rate	16
B. The filed rate was not conditional	18
C. Texaco's certificate of public convenience and necessity is further evidence that the filed rate was 11 cents	21
Conclusion	23

CITATIONS

CASES:

<i>Atlantic Refining Co. v. New York Public Service Commission</i> , 360 U.S. 378 (1959)	9, 10
<i>Cities Service Gas Co. v. Federal Power Commission</i> , 255 F. 2d 860 (10 Cir. 1958), cert. den. 358 U.S. 837 (1958)—(the <i>Magnolia</i> case)	6, 16

	Page
<i>Cities Service Gas Co. v. State Corporation Commission</i> , 355 U.S. 391 (1958)	18
<i>City of Tacoma v. Taxpayers of Tacoma</i> , 357 U.S. 320 (1958)	8, 10, 11
<i>Continental Oil Co. v. Federal Power Commission</i> , 236 F. 2d 839 (5th Cir. 1956)	6
<i>Federal Power Commission v. Union Producing Co.</i> , 230 F. 2d 36 (D.C. Cir. 1956)	21
<i>Louisville & N.R.R. v. Central Iron & Coal Company</i> , 265 U.S. 59 (1924)	13
<i>Montana-Dakota Utilities Co. v. Northwestern Public Service Co.</i> , 341 U.S. 246 (1951)	6, 8, 9, 10
<i>Signal Oil and Gas Co. v. Federal Power Commission</i> , 238 F. 2d 771 (3rd Cir. 1956)	21
<i>United Gas Pipe Line Co. v. Mobile Gas Service Corp.</i> , 350 U.S. 332 (1956)	7-8, 10

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 81

TEXACO INC., *Petitioner*

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN
AND FOR NEW CASTLE COUNTY, AND THE HONORABLE
ANDREW D. CHRISTIE, sitting as a Judge of that
Court, *Respondents*

and

CITIES SERVICE GAS COMPANY, *Intervening Respondent*

On Writ of Certiorari to the Supreme Court of the
State of Delaware

**REPLY BRIEF OF PETITIONER TEXACO INC. TO BRIEF
FOR CITIES SERVICE GAS COMPANY**

Texaco Inc. (Texaco) and Pan American Petroleum Corporation (Pan American) have filed a single, joint answer to motions of Atchison, Kansas, *et al* and Colorado Interstate Gas Company for leave to file briefs *Amici Curiae*, as well as a joint reply to briefs in support of such motion. For purposes of this separate reply, Texaco hereby adopts the statement and the argument presented by Pan American in its reply to the main brief of Cities Service Gas Company

2

(Cities), the intervening respondent herein. Therefore, the argument in this reply by Texaco to Cities' brief will be supplementary in nature to that set out in the Pan American reply brief except where necessary to meet Cities' arguments which are concerned with Texaco's particular factual situation.

INTRODUCTORY STATEMENT

Cities seeks to create the illusion that the jurisdictional question before this Court upon review of the decision of the Supreme Court of Delaware involves consideration of neither the level of petitioners' filed rates nor the exclusiveness of the procedures prescribed by the Natural Gas Act governing review of orders by the Federal Power Commission (Cities Br., pp. 13-14, 19-21, 35-36).¹ Section I of this reply brief is directed to Part I of Cities' brief, and will show that both the filed rate and the exclusive review matters are before this Court because the state courts, in concluding that the Superior Court had jurisdiction to enforce Cities' claims, considered it necessary to, and actually did, decide the ultimate legal question on the merits—this ultimate question being the levels of petitioners' filed rates.

Parts I and II of the reply brief of Pan American (pp. 2-17) refute the theories and citations relied upon by Cities in Part II of its brief as support for Cities' claim that Section 22 of the Natural Gas Act has no application because of the form of action of Cities original suit. Texaco fully subscribes to all points and arguments of Pan American, and supplementary thereto, in Section II of this brief, points out several addi-

¹ Pertinent sections of the Natural Gas Act and the applicable Rules and Regulations of the Federal Power Commission promulgated thereunder are set out in the Appendix to Texaco's main brief.

tional reasons why Texaco believes that Section 19 and Section 22 reserve for federal courts exclusive jurisdiction to hear, determine and enforce all rate claims—including those filed in the form used by Cities.

Cities devotes Part III of its brief to the formulation of excuses to cover its failure in 1954, 1955 or 1957 to pursue the administrative remedies then available to it under the Natural Gas Act. By way of explanation, Cities claims that its so-called "refund letters" of January 21, 1954 created "agreements", and reasons that since June 7, 1954, the filed rates for both petitioners were conditional upon the validity or invalidity of the Kansas Order (Cities Br., p. 42). However, elsewhere in its argument, Cities attempts to distinguish Texaco's rate filings and certificate proceedings from those of Pan American. Therefore, although Texaco adopts Pan American's reply arguments with respect to the general legal principles applicable to Part III of Cities' brief (Pan Am. Reply Br., pp. 19-35), in Section III hereof Texaco reviews and discusses the legal effect of its particular rate filings and of the unconditioned certificate of public convenience and necessity issued by the Commission to Texaco under Section 7 of the Act.

I. THE ISSUES ON REVIEW INCLUDE THE LEVEL OF THE FILED RATES, THE NECESSITY TO EXHAUST ADMINISTRATIVE REMEDIES AND THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS OF APPEALS UNDER SECTION 19 OF THE ACT.

Texaco has sought review of the decisions below because the Delaware courts have not only misinterpreted Section 19 and Section 22 of the Natural Gas Act, but have also misconstrued key decisions of this Court in a manner which destroys the orderly administration and

effective enforcement of the Act with respect to rate matters. (Texaco Pet. for Cert., pp. 8-13). The Delaware Supreme Court decision to be reviewed shows that the reasoning and legal principles advanced in that decision to support the jurisdiction of Cities' claims, raise for review issues involving not only Section 22, but the entire regulatory scheme and rate enforcement plan of the Natural Gas Act.

The record is clear and all parties agree that Cities' complaints as originally filed were predicated on common law theories of contract, restitution and unjust enrichment and that these filings made no reference and placed no reliance on the Natural Gas Act or any orders, rules or regulations issued thereunder or any action taken pursuant thereto (Cities Br., p. 4). Therefore, after establishing that both Cities and Texaco were natural gas companies subject to Commission regulation and that during the major portion of the period in question, Texaco had a rate schedule on file covering its sales to Cities, Texaco moved for summary judgment on the principal ground that, since Cities' claim was not based upon the filed rate or upon the Natural Gas Act, its complaint was legally insufficient (R. 3-4).

In the brief filed in opposition to Texaco's motion, Cities conceded for the first time that "the only lawful rate is the filed rate with the Federal Power Commission" and then argued that its payments to Texaco had exceeded the filed rate (R. 4). It was Cities' shift of position that prompted Texaco in its reply brief to specifically raise the jurisdictional question on the grounds that Section 22 of the Act vested exclusive jurisdiction of claims based upon rates filed with the

Federal Power Commission in the federal district courts (R. 4).²

This was the posture of the case when Texaco's motion for summary judgment was considered by the Superior Court. Only the question of jurisdiction was involved. Therefore, Texaco made no attempt to brief arguments going to the merits which, of course, involved the level of its filed rate.

However, in so far as pertinent here, the Delaware Superior Court made three major decisions:

First, it decided that the *form* of Cities' action determined, in the first instance, whether a state court or a federal district court had jurisdiction. It reasoned that if the action is "based on a liability or duty created by such Act" then Section 22 reserved jurisdiction for the federal district courts (R. 14); however, if the action is "based on contracts and/or restitution and not on the Natural Gas Act," then the jurisdiction to entertain and determine the case is in a state court (R. 13).³

Second, because of the doctrine of the conclusiveness of the rates which were accepted and filed by the Com-

² This is the jurisdictional attack which Cities claims Texaco made as an "afterthought" (Cities Br. p. 12, fn. 10). In its main brief supporting its motion for summary judgment, Texaco had previously called the attention of the Superior Court to the fact that, if Cities had based its suit on the filed rate, it would have been required by Section 22 of the Act to assert its claim in a federal court (R. 220).

³ As explained, (p. 13 *infra*), the error of both courts below stemmed from the test they applied to determine whether Cities claims were "based" or "founded" upon a duty or liability created by the Act. A state court actually lacks jurisdiction if the "purpose" of the action or the "effect" of its decision would necessarily be to enforce such a liability or duty.

mission,⁴ the Superior Court decided that it did not have jurisdiction to *enforce* recovery if the contract price claimed by Cities was different from ("inconsistent with") the filed rate (R. 14), so that "The question then becomes what rate was legally filed?" (R. 18). It then proceeded to determine that the "only lawful filed rate is the contract rate unaffected by the Kansas Order." (R. 21). Thus, apart from the threshold jurisdictional question raised by Section 22, in order to surmount the absolute statutory finality of the filed rates, the Superior Court also found it necessary to determine, with respect to its enforcement jurisdiction, the ultimate question on the merits—the level of the effective filed rates.

Third, by considering the question to be, "what rate was *legally filed*" (R. 18, emphasis supplied) the court decided that it was not limited to an "interpretation" of what rate the Commission *intended to or actually did* accept and file. The court arbitrarily assumed that a state court had the power to ignore the primary jurisdiction of the Commission, and determine what rate the state court thought the Commission *should have* accepted and filed. This construction of its authority is the assumption by a state court of the power and jurisdiction to modify or set aside a rate order⁵ of the Com-

⁴ This is the "filed rate" and statutory finality doctrine which has been recognized by all parties connected with this case, and also by both of the Delaware courts (R. 12, 38). The doctrine was expressed by both the majority and minority of this Court in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 251, 255-256.

⁵ The action of the Commission of accepting tendered rates for filing is a final order reviewable under Section 19 of the Act. *Continental Oil Co. v. Federal Power Commission*, 236 F.2d 839, fn. 3, pp. 841, 852 (5th Cir. 1956) and *Cities Service Gas Co. v. Federal Power Commission*, 255 F.2d 860 (10th Cir. 1958), cert. den. 358 U.S. 837 (1958)—the *Magnolia* case.

mission by collateral attack. The question of the exclusiveness of the jurisdiction of the Courts of Appeals, under Section 19 of the Act, to review and then to affirm, modify or set aside rate orders of the Commission was thus raised as a major issue in this case.

Accordingly, the Petition for Writ of Prohibition, in the original action in the Delaware Supreme Court, tested the attempt by the state court to intrude upon federal jurisdiction under Sections 4 and 19, as well as Section 22. Petitioners there averred that jurisdiction "is exclusively invested in the federal courts, or in the Federal Power Commission, and that the courts of this state have no jurisdiction thereof." (R. 6).

However, the Delaware Supreme Court, in sustaining the lower court, adopted the reasoning and legal theories of the latter, including the misinterpretations of Sections 4 and 19, now preserved for review by this Court. It thrust aside Section 22, and said that Cities' common law form of action was sufficient to place initial jurisdiction in the state court because:

"... it seems to us that the claims here are not founded upon any liability *created* by the Natural Gas Act, but upon a private contract deriving its force from state law." (R. 41).

It held that while "adjudication of Cities' claims did entail an examination of the Natural Gas Act, the regulations of the Commission and the applicable federal decisions—these have been brought into the cases by way of defense" so that a state court's jurisdiction was not displaced in favor of that of a federal court (R. 41). It interpreted this Court's decision in *United Gas*

⁶ Although petitioner believes it to be insignificant to a decision in this case, the letter of January 21, 1954 to Texaco from Cities—its so-called "refund letter"—was filed with the Commission as a supplement to Texaco's rate schedule (R. 155-156, Texaco Main Br., p. 5, fn. 4).

Pipe Line Company v. Mobile Gas Service Corp., 350 U.S. 332, (1956) as preserving common law actions to enforce price provisions in agreements related to interstate sales after a *filed* rate has been established by the Commission. (R. 41).

In addition, the Supreme Court found that in order for the lower court to entertain and enforce Cities claims, that court must determine the level of the filed rate. In doing so, it, too, ignored the rate-establishing orders of the Commission (R. 45), and made its own independent determination of the "filed" rate. By assuming that a state court has power in a "common law" action to modify or set aside a final rate order of the Commission, the Delaware Supreme Court also ignored this Court's teachings in *Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320 (1958). In that opinion a statute, identical with Section 19(b) in all material respects, was held to vest exclusive jurisdiction in federal Courts of Appeals to review orders of the Commission.

Actually the Supreme Court of Delaware even went farther than the Superior Court in emasculating the filed rate and its statutory finality. It interpreted this Court's *Montana-Dakota* decision, *supra*, as holding that the sanctity of the filed rate applied only after the justness and reasonableness of a rate has been determined by the Commission.⁷ The Delaware Court said:

⁷ This interpretation cannot be reconciled with the finding in *Montana-Dakota*, *supra*, that:

"It [the buyer] can claim no rate as a legal right that is other than the filed rate, whether fixed, or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." (341 U.S. at 251),

which was also the view of the minority:

"Unless they are challenged either by an interested party or on the Commission's initiative, the filed rates become the legal rates." (341 U.S. at 255).

"If under the Natural Gas Act a gas producer and a distributor may agree to fix the rate, and from time to time to change it, absent any proceeding before the Commission to regulate the rate, why may they not agree that the rate to be paid shall be the contract rate if the rate imposed by a State Commission shall be held invalid? This, in effect, was what the parties here agreed upon." (R. 41).

Apparently it was this misinterpretation of *Montana-Dakota, supra*, which prompted the erroneous holding that the requirement of exhaustion of administrative remedies prescribed by the Act, which culminates in review under Section 19, would be applicable only "to a suit in the federal court attacking the reasonableness of the rate" (R. 45).⁸

A further clear indication that the Delaware Courts held small regard for the regulatory processes and final orders of the Commission is evidenced by the fact that neither court mentioned the order issuing Texaco's certificate of public convenience and necessity which was unconditioned as to rate. Clearly no consideration was given to the fact that, in issuing that certificate, the Commission was required under Section 7 to evaluate all factors bearing on the public interest with respect to Texaco's 11-cent rate.⁹ By determining the filed rate which they thought the Commission *should have* accepted, the state courts have necessarily invaded the Commission's province of matters subject to its regulation.

It is not just Section 22 which is involved in this jurisdictional dispute with the Delaware Courts but

⁸ This holding clearly conflicts with the many Section 19 review cases, especially those cited by *Cities* (*Cities Br.*, p. 39 fn. 28), which were review of Commission orders *filing* rates—not determining the *reasonableness* of those rates.

⁹ *Atlantic Refining Co. v. New York Public Service Commission*, 360 U.S. 378, 391 (1959); the *Catco* case.

also Sections 4, 7, and 19 of the Act. Nor have these local tribunals shown any substantial deference to important decisions of this Court dealing with the limitations on contract rights arising from the Commission's actions establishing filed rates (*Mobile and Montana-Dakota, supra*), the exclusive mode and jurisdiction prescribed by the Act for review of such actions (*Tacoma, supra*), and the effect of issuance of a certificate of public convenience and necessity (*Cutco, supra*).

II. SECTION 19 AND SECTION 22 OF THE ACT DEPRIVES THE STATE COURT OF JURISDICTION OF CITIES' CLAIMS.

Cities still misconceives, as did the courts below, the purpose and scheme of the exclusive rate regulatory and enforcement provisions of the Natural Gas Act. It was the failure of the Delaware Supreme Court to appreciate the particular functions of Section 19 and Section 22 of the Act as interrelated with the filed rate doctrine which drove it to strange and distorted interpretations of clear pronouncements of this Court. A proper interpretation and application of the provisions of the Act and the Court's opinions reveals that under no circumstances does a state court have jurisdiction to either determine the actual level of a disputed filed rate or to enforce refund of amounts allegedly paid in excess of that filed rate.

A. The jurisdictional theory of the Delaware Courts erroneously assumes that state courts have jurisdiction to modify or set aside final orders of the Federal Power Commission.

1. In its letter order accepting and filing of Texaco's rate for sales to Cities and establishing Texaco's FPC Gas Rate Schedule No. 100, the Commission advised that any contract provisions which might operate to "change the rates *being charged June 7, 1954*, will con-

stitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act" and for such changes to become effective, notice of such change of rate must be "filed with the Commission" pursuant to said Section 4(d) and the Commission's Regulations. (R. 139, emphasis supplied). The same language was used in the letter order to Pan American (R. 601). No one, including the courts below, disputes the fact that the rate *being charged June 7, 1954* was 11 cents per Mcf (R. 225). Yet both Delaware courts found that if they were to retain jurisdiction of Cities' claims, it was necessary for them to review the law and facts and to find that the "filed rate" was at the same level as an alleged lower "contract" rate. This they did (R. 14, 21, 45). Therefore, they are deprived of jurisdiction under their own theory because jurisdiction to modify or set aside the 11 cent rate, which was the rate obviously made effective by the Commission, is specifically, completely and *exclusively* vested in federal courts. *Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320, 335-326 (1958).

2. Since the subsequent August 29, 1957 letter order accepting and filing Cities letter of January 21, 1954 as part of Texaco's rate schedule also ordered that no change could be made in the rates "being charged June 7, 1954" without notice as required by the Act (R. 155), Section 19(b) also precludes a state court, or even a federal court at this late date, from asserting jurisdiction to enforce Cities claimed "conditional" rate (Cities Br. p. 42). This rate "being charged June 7, 1954" was indisputably the 11 cent rate. Cities failed to file the statutory notice or the necessary complaint needed to reduce that rate—or to require Texaco to do make such filing—in the manner required by Section 4(d). The only way in which Cities "conditional" rate theory could be enforced to change the rate paid on

June 7, 1954 is by modification of the Commission's initial rate-establishing order. This action must come from a federal Court of Appeals. Since Cities slept on its rights, it cannot avail itself of the exclusive jurisdiction of a Court of Appeals. It cannot avoid the Act by the clever design of its pleadings filed in a court without power or jurisdiction to grant relief.

3. The basic error of the Delaware Courts theory of jurisdiction is its assumption of the powers reserved to the Courts of Appeals. This assumption is inherent in its theory. This usurpation of the Section 19(b) review and modification powers is apparent, regardless of the level of the filed rate for the sales in question.

The state courts, in establishing their jurisdiction to entertain Cities suits, asserted a power to determine "what rate was legally filed" (R. 18) on the basis of what these courts felt was settled federal law (R. 45). Hence, these state courts sought to determine what the Commission *should have done*. They considered it unnecessary to determine what the Commission had intended to do, and did do, in relation to Texaco's filings. Regardless, reasoned the Delaware courts, of what the Commission may have done in 1954, this is what it should have done under the law as it stands in 1960. This is the bold exercise of a power to set aside an order of the federal agency. It is a seizure of jurisdictional rights exclusively reserved to the federal courts.

It becomes clear that it is immaterial whether the Delaware courts, in applying their jurisdictional theory, did or did not set aside a "filed rate" established by Commission order—the jurisdictional theory claimed by the Delaware courts necessarily creates in state courts the power to set aside such orders. This is expressly forbidden by Section 19 of the Natural Gas Act.

B. The purpose or effect of an action, not its form, determines whether federal District Courts have exclusive jurisdiction.

4. Texaco's position on the purpose and scope of Section 22 is this—the key to rate regulation is finality of the filed rate. The mandatory filing requirements of Section 4(c) of the Act and the prohibition, by Section 4(d), of any change in that filed rate, except by means of the complete and exclusive procedures prescribed by the Act, establish the basis of that necessary finality. Thus, the Act creates in natural gas companies certain obligations with respect to a filed rate. The moment a filed rate was established for Texaco, whether derived from a contract or a tariff, the Act “created” in Texaco the legal “duty” to charge and collect *only* the filed rate—no more, no less. And, if it should charge more than that rate, no matter what the reason, the Act also “creates” the additional legal “liability” of refunding all excess amounts collected. The reason that Section 22 places in the federal district courts exclusive jurisdiction of all actions to enforce this “duty” or this “liability” is that these legal obligations are created *solely* by statute. Common law defenses of estoppel, waiver, mutual mistake, undue coercion, or even fraud, and the like, are of no avail. There is no excuse for noncompliance with a filed rate (except, possibly, the running of the statute of limitations).¹⁰ Cities common

¹⁰ Justice Brandeis' summary in *Louisville & N. R.R. v. Central Iron & Coal Company*, 265 U.S. 59, 65 (1924), is typical of the views expressed by this Court:

“The shipment being an interstate one, the freight rate was that stated in the tariff filed with the Interstate Commerce Commission. The amount of the freight charges legally payable was determined by applying this tariff rate to the actual weight. Thus, they were fixed by law. No contract of the carrier could reduce the amount legally payable, or release from liability a shipper who had assumed an obligation to pay the charges. Nor could *any* act or omission of the carrier (except the running of the Statute of Limitations) estop or preclude it from enforcing payment of the full amount by a person liable therefor.” (Emphasis supplied.)

law form of action, regardless of its being initially "based" or "founded" upon common law theories of contract or restitution is immaterial and has no significance. If its action has as its *purpose* or its *effect* or its *result* the enforcement of the duty and liability created in Texaco by and under the Natural Gas Act, recovery can be enforced only in the federal district courts.

Any other construction of Section 22 would defeat the whole purpose for the finality of the filed rate. If that Section were interpreted as allowing concurrent enforcement jurisdiction in a state court, depending upon whether the action was based or founded upon common law theories or upon the statutory duties or liabilities, the right to raise common law defenses in one court and not in the other could, in many instances, result in different interpretations of the level of the "filed rate."¹¹ This is the lack of uniformity Section 22 was intended to prevent, not lack of uniformity because this Court could not ultimately review both decisions (Cities Br., pp. 34-35). Moreover, it is in the public interest to establish the finality of a filed rate at the earliest possible moment.

The instant case provides a perfect example of why such concurrent jurisdiction cannot exist. In addition to its common law action in the Delaware court, Cities has recently filed in the federal district court in Delaware, suits against petitioners which are based upon the statutory duties and liabilities created by the Nat-

¹¹ Since the exclusive jurisdiction to modify or set aside a final order of the Commission establishing a specific filed rate is lodged in the Courts of Appeals by Section 19, neither a state nor a federal district court has jurisdiction to modify or change the level of the rate accepted and filed by the Commission.

ural Gas Act. If these courts have concurrent jurisdiction, depending upon the different forms of action, it is quite possible that each court, under the separate theories and legal principles applicable to the different actions, could find different levels for the "filed rate", and, on review, this Court, would then be faced with the dilemma of sustaining two different price levels—one rate which might properly be based on common law contractual rights, and the other founded on the doctrine of the conclusiveness of the rates accepted and filed by the Commission.

III. THE COMMISSION'S ACTIONS ESTABLISHED A SPECIFIC UNCONDITIONAL FILED RATE OF 11 CENT PER MCF.

The legal effect of Texaco's rate schedule tenders and the orders acknowledging their acceptance and filing by the Commission established as the effective filed rate for Texaco's sales to Cities the rate of 11 cents per Mcf being paid on June 7, 1954. This filed rate has never been decreased, set aside, or conditioned under any of the procedures prescribed by the Natural Gas Act. Even the Delaware Supreme Court appears to concede this (R. 36), so these facts were merely referred to by footnotes in Texaco's main brief (pp. 8-11, fns. 8, 9, 11, 12 and 13). However, Cities has labeled the filed rate "argument" as "obscure" (Cities Br. p. 40), and a summary of the "reasons why" the rate is 11 cents is pertinent.

A. In its rate filing orders the Commission has emphasized the 11 cent rate.

1. On September 24, 1954, when Texaco made its initial rate schedule filing of its June 16, 1949 gas sales contract with Cities, it showed that "in accordance with" the Kansas Minimum Price Order, the rate being charged during June 1954 was 11 cents¹² (R. 130-138). Copies of this filing were served on Cities by mail (R. 127) and were received by Cities (R. 212).
2. On December 29, 1954, the Commission, in a formal meeting, voted to accept this tender for filing (R. 224) and the rate shown for Texaco's Rate Schedule No. 100 (covering the sales in question) was 11 cents per Mcf for June 7, 1954 (R. 225).
3. In its letter order of February 7, 1955, advising of its acceptance for filing of Texaco's initial tender, the Commission warned that changes in the rate "*being charged June 7, 1954*" would require the filing of notice as prescribed by Section 4(d) (R. 139, emphasis supplied). Texaco sent, and Cities acknowledged receipt of, a copy of this order (R. 212).¹³
4. On December 5, 1955, the Commission issued a certificate of public convenience and necessity to Texaco "authorizing the sales" without condition-

¹² A detailed explanation of its rate and certificate filings is contained in Texaco's Statement of the Case (Texaco Main Br. pp. 6-12).

¹³ Cities decries its lack of Commission notice (Cities Br. pp. 42, 44), but its acumen in a similar situation, where it had no more notice than it had here, is illustrated in the *Magnolia* case, *Cities Service Gas Co. v. FPC*, 255 F.2d 860 (10th Cir. 1958), *cert. den.* 358 U.S. 837.

ing in any way the 11 cents rate being paid at that time (R. 179-188). Due notice of the public hearing on this certificate matter had been given by the Commission itself. Other parties intervened; Cities did not. (R. 185).

5. On June 13, 1957, Texaco forwarded to the Commission a notice of change of rate from 11 cents to 11.055 cents to reflect effectiveness of a reimbursement by Cities of 50 per cent of the increased portion of the state severance tax. The increased portion of the tax amounted to one percent of the rate being paid for gas. Thus only on the basis of an 11 cent rate would Cities 50 percent reimbursement amount to .055 cents. Again, Cities was served with a copy of this filing which showed that this increase was computed on the basis of an 11 cent rate (R. 144).
6. On August 21, 1957, the Commission, in formal session voted to accept Texaco's change in rate (R. 226-229). The minutes of this meeting show that Texaco's rate was changed *from 11 cents to 11.055 cents* (R. 229).¹⁴
7. By-letter order dated August 29, 1957, Texaco was advised that its notice of change had been accepted and that the new rate "shall become effective" on July 1, 1957. This order also provided that the new rate could not be changed without prior notice (R. 157-158).
8. Effective as of July 1, 1957, Cities commenced paying Texaco at the rate of 11.055 cents.

¹⁴ Although this one percent tax increase was later declared to be invalid, that does not detract from the point that the Commission's action in accepting the increase shows that it considered Texaco's effective filed rate to be 11 cents.

These facts are clear, cumulative, and compelling. As far as the Commission's orders were concerned, the Commission established as the filed rate the rate of 11 cents per Mcf for Texaco's sales to Cities as of June 7, 1954. From its subsequent actions, it is also clear that the Commission considered that it had established that rate as Texaco's effective filed rate.

The reason for the Commission's action is obvious. In Order 174A issued July 16, 1954, 19 Fed. Reg. 4534 (1954), the Commission said, "a reasonable cut-off date [June 7, 1954]-should be fixed in order to avoid confusion in attempting to readjust past transactions." The position of the majority that the effective rate was to be the price being charged and paid on June 7, 1954 was emphasized by Commissioner Digby in his dissent. He said: "In freezing the producers' rates as of June 7, 1954, they are deprived of any opportunity to file as an original rate schedule a sales contract in which the price of gas has increased since June 7, 1954." Although these facts were not argued before the Superior Court they were called to the attention of the Delaware Supreme Court after the former had ruled that the filed rate was the "contract" price.

B. The filed rate was not conditional.

In order to circumvent the exclusive rate-modification jurisdiction of the Courts of Appeals under Section 19(b), Cities now takes the position that its letter of January 21, 1954 created a filed "agreement" (Cities Br. pp. 37, 38) so that when the Kansas Minimum Price Order was declared to be invalid by this Court on January 20, 1958¹⁵ Texaco's June 7, 1954 filed

¹⁵ *Cities Service Gas Company v. State Corporation Commission*, 355 U.S. 391 (1958).

rate of 11 cents was somehow retroactively and automatically changed to the lower "contract" price (Cities Br. 42). Cities seems to imply that language used in a letter from Texaco which was responsive to a July 12, 1957 request from the FPC Secretary treated this "agreement" which now estops Texaco from claiming its filed rate (Cities Br. pp. 9, 41, 55).

The Secretary's letter asked for submission of "all papers related [to the Kansas Minimum Price Order] exchanged with the buyer" (R. 150, emphasis ours). Texaco's reply of July 29, 1957 enclosed copies of Cities' January 21, 1954 letter, and that letter was described as "setting forth the contingent or conditional basis upon which the minimum rate will be paid" (R. 152-153). Contrary to Cities' statement in its brief, Texaco did not say that it was "receiving" the 11 cent rate on any conditional or contingent basis (R. 152).

As Texaco has already explained, it did not include Cities' letter of January 21, 1954 in its rate schedule filings because the Regulations provided for the filing of only the basic gas sales contract "and all supplements or agreements amendatory thereof." Since Texaco had never replied to Cities' letter nor agreed to any refund, that letter had never been considered to be either a contract or an amendment to the basic contract (Texaco Main Br. p. 7, fn. 7). The letter is nothing more than a claim by Cities that its payments would be "involuntary" and that it will "expect" refunds if "overpayments" should result (R. 154). Therefore, Texaco's language which Cities has attempted to point to as constituting an "agreement" is simply an accurate description by Texaco of what Cities' January 21, 1954 letter actually is—a unilateral statement on Cities'

part that, as far as it is concerned, the payments under the old state order were claimed to be involuntary.¹⁶

Certainly, the Commission has never considered Cities' letter as having the "conditional" effect Cities now claims. In its letter order of August 29, 1957, accepting that letter as Supplement No. 4 to Texaco's Rate Schedule No. 100, the Commission made this clear beyond any doubt. It specifically ordered that any provisions for future *automatic* adjustments in rates or charges" contained in such document, could not operate to "change the rates *being charged June 7, 1954*," until a notice of change in rate was filed with the Commission pursuant to Section 4(d) of the Act and Section 154.94 of the Regulations (R. 155-156). Cities admits it had knowledge of this letter (R. 212).

Therefore, Cities cannot now claim that the decision of this Court holding the Kansas Order to be invalid had the effect of overriding Section 4(d) of the Act and the Regulations of the Commission to cause an "automatic" and retroactive change in the 11 cents rate which was being charged June 7, 1954.¹⁷

Moreover, Cities' letter was written before Commission regulation was held to be applicable to producers, such as Texaco, so that it could not have been intended to, nor can it now be treated as, changing Texaco's FPC filed rate collaterally.

¹⁶ Of course, payment of the federal filed rate could not be made on an involuntary, conditional or contingent basis.

¹⁷ Additional reasons why the 11 cents rate was not "conditional" are set out in the Pan American Reply Brief, pp. 22-30.

C. Texaco's certificate of public convenience and necessity is further evidence that the filed rate was 11 cents.

The principal fault Cities finds with Texaco's certificate is that "The order made no mention of price" (Cities Br. p. 49). The short answer to this argument is that no orders of the Commission issuing certificates to producers prescribe a specific price *unless the initial price is specifically and clearly conditioned to a lower rate.*

Cities seems to attach significance to the fact that the certificate order authorized Texaco "to *continue* the service being rendered" (Cities Br. 49, emphasis supplied). There is no question that the Commission could have denied a certificate and required Texaco to discontinue its sales or, as is more pertinent here, it could have exercised its Section 7(e) powers and authorized such continuance only on condition that Texaco reduce its price to a lower rate.¹⁸ The Commission did neither. As this Court has said in its unanimous *Catco* decision, *supra*, Section 7 "requires a most careful scrutiny and responsible reaction [by the Commission] to initial price proposals of producers" and "requires the Commission to evaluate all factors bearing on the public interest" (360 U.S., at page 391). The Commission is presumed to have done its duty. *Federal Power Commission v. Union Producing Co.*, 230 F. 2d 36, 40 (D.C. Cir. 1956). Therefore, the fact that no rate condition was imposed is conclusive as to Commission consideration of the 11 cent rate, and its conclusion that Tex-

¹⁸ At the time Texaco's certificate was issued, December 5, 1955, the Commission was well aware of its rate conditioning powers. It had previously conditioned the rate of an independent producer to a lower level in a certificate proceeding. See *Signal Oil and Gas Co. v. F.P.C.*, 238 F. 2d 771 (3rd Cir. 1956).

aco's effective filed rate was required by the public convenience and necessity.

Although Cities had been given "due notice" by the Commission of the "public hearing" on Texaco's certificate matter (R. 183), it entered no protest. The unconditioned certificate was issued December 5, 1955 and accepted by Texaco by letter dated December 16, 1955 (R. 188, 191). Cities still made no protest and continued to pay at the 11 cents rate for the then permanently and unconditionally certificated sales. By so doing, it forfeited its last opportunity to challenge the 11 cents rate through court review.¹⁹

Cities' attempt to discredit the finality of Texaco's certificate by reference to special language inserted by the Commission in the certificate issued to Pan American after a stipulation in which Cities joined (Cities Br. p. 50, 3a), simply demonstrates the weakness of Cities' "conditional" rate argument. No such language is included in Texaco's certificate order. Furthermore, the specific language included in the Pan American certificate order, after a stipulation in which Cities joined, does not in any way change the Commission's earlier actions making rates effective under Section 4. (Pan Am. Reply Br., pp. 27-29).

Thus Cities' arguments have no foundation. The effective rates for both petitioners are and have been the rates shown by Commission actions under Section 4 of record here. The state courts obviously have no jurisdiction over Cities' collateral attacks.

¹⁹ Of course, if Cities had protested the issuance of the unconditioned certificate and pursued its administrative remedies, the Commission could only have conditioned the rate prospectively. The 11 cents rate had become the legal effective rate when Cities failed to challenge the Commission's letter order of February 7, 1955, accepting Texaco's initial rate filings (R. 138-144).

CONCLUSION

For the above reasons and those set forth in petitioner's main brief it is respectfully submitted that the judgment of the Supreme Court of Delaware should be reversed and vacated, and that the Writ of Prohibition prayer for in that court should issue.

JOHN J. WILSON

FRANK H. STRICKLER

815 Fifteenth St., N. W.
Washington 5, D. C.

PAUL F. SCHLICHER

135 East 42nd Street
New York 17, New York

ALFRED C. DECRANE, JR.

P.O. Box 2332
Houston 1, Texas

*Attorneys for
Texaco Inc.*

April, 1961

SUPREME COURT OF THE UNITED STATES

NOS. 80 AND 81.—OCTOBER TERM, 1960.

Pan American Petroleum Corporation, Petitioner.

80

Superior Court of the State of Delaware in and for New Castle County, et al.

Texaco, Inc., Petitioner.

81

Superior Court of the State of Delaware in and for New Castle County, et al.

On Writs of Certiorari to the Supreme Court of Delaware.

[May 29, 1961.]

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

This case presents for review the judgment of the Supreme Court of Delaware denying a petition for a writ of prohibition to prevent further proceedings before the Superior Court of the State of Delaware, in and for New Castle County, in actions by Cities Service Gas Company against petitioners involving contracts for the sale of natural gas by petitioners to Cities Service. The claim of petitioners is that the Natural Gas Act, 52 Stat. 821, as amended, 15 U. S. C. § 717 *et seq.*, has deprived state courts of jurisdiction over the subject matter of these cases. The sole question, both below and here, is whether the state courts had jurisdiction.¹ The impor-

¹ It is apparent from the opinion of the Delaware Supreme Court that this was the only question decided there. See also *Clendaniel v. Conrad*, 26 Del. 549, 598, 83 A. 1036, 1052.

"The writ of prohibition . . . issues only from a superior court to an inferior court, tribunal or judge, and only for the purpose of

2 PAN AMERICAN PETROLEUM v. DELAWARE.

tance of the problems thereby raised justified their disposition here, so we granted the petition for certiorari. 363 U. S. 818.

Cities Service is a natural gas pipeline company. Petitioners are producers of natural gas. Cities Service purchases natural gas from petitioners and transports it through its pipelines, in interstate commerce, for sale to local distributing companies. During the period 1949-1951 Cities Service entered into contracts for the purchase of natural gas produced by petitioners from the Hugoton Field in Kansas. In each instance the price agreed upon was less than eleven cents per thousand cubic feet (Mcf) measured on a pressure base of 14.65 pounds per square inch absolute (psia).

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated an order, to take effect on January 1, 1954, fixing a minimum price of eleven cents per Mcf on a pressure base of 14.65 psia for gas taken from the Kansas Hugoton Field. The effect of this order was to require Cities Service to pay petitioners at a higher rate than those specified in the pre-existing contracts. Cities Service brought suit in the Kansas courts to obtain judicial review of the order.

On January 21, 1954, Cities Service advised each of the petitioners by letter of the Kansas minimum-rate order and of its suit for judicial review of that order, adding the following:

"Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order.

keeping such inferior court within the limits of its jurisdiction. That is the sole purpose of the writ."

Accord, Knight v. Haley, 36 Del. 366, 374, 176 A. 461, 464; *Canaday v. Superior Court*, 49 Del. 332, 338-339, 116 A. 2d 678, 681-682.

PAN AMERICAN PETROLEUM v. DELAWARE. 33

Such compliance with said Order by this Company, however, is made to avoid the penalties and actions provided by the Kansas statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

"In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Thereafter, each voucher check sent by Cities Service to petitioners in payment for gas purchased bore a notation stating that it was tendered "subject to the provisions" of the January 21, 1954, letter. Petitioners cashed these checks without objection to the conditions of their tender. Petitioner Pan American Petroleum Corporation (formerly Stanolind) wrote in reply to the Cities Service letter of January 21:

"We construe the last paragraph of said letter to mean that Cities will expect Stanolind to refund to it the amount of over-payments, if any, without any interest thereon should the said Order of December 2, 1953 be finally judicially modified or declared to be invalid in whole or in part by an adjudication which would be binding and controlling on Stanolind. We will, therefore, accept payments on this basis."

Petitioner Texaco, Inc., acknowledged receipt of Cities Service's payment of February 25, 1954, by a letter dated March 2, 1954, without objection to the conditions of payment.

4 PAN AMERICAN PETROLEUM v. DELAWARE.

On June 7, 1954^{*} this Court, in *Phillips Petroleum Co. v. Wisconsin*, 347 U. S. 672, held that the jurisdiction of the Federal Power Commission extended to "the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company." 347 U. S., at 682. Following the *Phillips* decision, the Commission, in accordance with the provisions of the Natural Gas Act, on July 16, 1954, issued an order requiring independent producers to file with the Commission rate schedules setting forth the terms and conditions of service and all rates and charges for transportation or sales effective on June 7, 1954. "Rate schedule" was defined to mean "the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954" 18 CFR § 154.93. In compliance with the Commission's directive, petitioner Texaco filed the basic contract between it and Cities Service, an amendatory letter, sample billing statements, the Kansas minimum-rate order, and the Cities Service letter of January 21, 1954. Petitioner Pan American filed its basic contract with Cities Service, a number of supplemental letters and agreements (not including the letter of January 21, 1954), a sample billing, and the Kansas order. With reference to that order, Pan American explained that it had been upheld by a court of competent jurisdiction and that therefore the gas sales contract had "in effect" been "amended thereby."

On December 8, 1956, the Supreme Court of Kansas sustained the validity of the Kansas Corporation Commission's minimum-rate order, *Cities Service Gas Co. v. State Corporation Comm'n*, 180 Kan. 454, 304 P. 2d 528, but on January 20, 1958; that decision was reversed here, *Cities Service Gas Co. v. State Corporation Comm'n*, 355 U. S. 391.

PAN AMERICAN PETROLEUM v. DELAWARE. 5

In complaints filed in the Superior Court of Delaware in June of 1958, Cities Service set forth the original contracts between the parties, the Kansas minimum-rate order and its bearing on the contractually determined prices, the letter of January 21, 1954, the voucher checks, other relevant correspondence, and this Court's reversal of the Kansas Supreme Court's decision upholding the order's validity. On the basis of these allegations Cities Service sued for overcharges by Texaco in the sum of \$412,995.95 and Pan American of \$10,324,468.67, paid under compulsion of the Kansas order for gas purchased at rates higher than those stipulated by contract. After intermediate procedural steps, the defendants moved for summary judgments, which were denied. There followed this petition for a writ of prohibition, attacking the jurisdiction of the Superior Court to entertain the actions brought by Cities Service.

The Supreme Court of Delaware sustained the jurisdiction of the Superior Court over these causes, stating that the claims of Cities Service "are not founded upon any liability created by the Natural Gas Act, but upon a private contract deriving its force from state law." (Emphasis in the original.) *Columbian Fuel Corp. v. Superior Court*, 158 A. 2d 478, 482.

"It is certainly true that the adjudication of these claims does entail an examination of the provisions of the Natural Gas Act, the regulations of the Commission, and the applicable federal decisions. But these have been brought into the cases by way of defense to complaints which, on their face, are based on nothing more than contracts to refund amounts measured by the contract or 'filed' rate and the rate fixed by the Kansas order. The general rule is that in such a case the plaintiff's suit is not one arising under federal law. . . ." 158 A. 2d, at 483.

6 PAN AMERICAN PETROLEUM v. DELAWARE.

The argument against this conclusion runs as follows. Under the Natural Gas Act the prices to be paid for natural gas sold wholesale in interstate commerce must be in accordance with the rates filed with the Federal Power Commission. Since the suits instituted by Cities Service involve rates so filed, they must either be to enforce a filed rate or to challenge a filed rate. If the former, they are subject to § 22 of the Act which provides, for present purposes, that "The District Courts of the United States . . . shall have exclusive jurisdiction of violations of this [statute] or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this [statute] or any rule, regulation, or order thereunder." 52 Stat. 833, 15 U. S. C. § 717u. If the latter, they lie within the purview of § 19 of the Act, which provides for review of Commission orders in the United States Courts of Appeals. 52 Stat. 831, 15 U. S. C. § 717r. In either case, the state courts are deprived of jurisdiction.

But questions of exclusive federal jurisdiction and ouster of jurisdiction of state courts are, under existing jurisdictional legislation, not determined by ultimate substantive issues of federal law. The answers depend on the particular claims a suitor makes in a state court—on how he casts his action. Since "the party who brings a suit is master to decide what law he will rely upon," *The Fair v. Kohler Die & Specialty Co.*, 228 U. S. 22, 25, the complaints in the Delaware Superior Court determine the nature of the suits before it. Their operative paragraphs demand recovery on alleged contracts to refund overpayments in the event of a judicial finding that the Kansas minimum-rate order was invalid, or for restitution of the overpayments by which petitioners have allegedly been unjustly enriched under the compulsion

of the invalid Kansas order. No right is asserted under the Natural Gas Act.

The suits are thus based upon claims of right arising under state, not federal, law. It is settled doctrine that a case is not cognizable in a federal trial court, in the absence of diversity of citizenship, unless it appears from the face of the complaint that determination of the suit depends upon a question of federal law. See, *e. g.*, *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U. S. 667, 672, and cases cited. Apart from diversity jurisdiction, "a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. . . . and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal. . . ." *Gully v. First National Bank*, 299 U. S. 109, 112-113.

For this requirement it is no substitute that the defendant is almost certain to raise a federal defense. See *Skelly Oil Co. v. Phillips Petroleum*, *supra*; *Gully v. First National Bank*, *supra*, and authorities cited in those cases. Equally immaterial is it that the plaintiff could have elected to proceed on a federal ground. *Henry v. A. B. Dick Co.*, 224 U. S. 1, 14-17. If the plaintiff decides not to invoke a federal right, his claim belongs in a state court.

The rights as asserted by Cities Service are traditional common-law claims. They do not lose their character because it is common knowledge that there exists a scheme of federal regulation of interstate transmission of natural gas. What was said in *Gully v. First National Bank*, 299 U. S., at 116, is apposite.

"We recur to the test announced in *Puerto Rico v. Russell & Co.*, *supra*: 'The federal nature of the right to be established is decisive—not the source of the authority to establish it.' Here the right to be estab-

8 PAN AMERICAN PETROLEUM v. DELAWARE.

lished is one created by the state. If that is so, it is unimportant that federal consent is the source of state authority. To reach the underlying law we do not travel back so far. By unimpeachable authority, a suit brought upon a state statute does not arise under an act of Congress or the Constitution of the United States because prohibited thereby. *Louisville & Nashville R. Co. v. Mottley, supra*. With no greater reason can it be said to arise thereunder because permitted thereby."

We are not called upon to decide the extent to which the Natural Gas Act reinforces or abrogates the private contract rights here in controversy. The fact that Cities Service sues in contract or quasi-contract, not the ultimate validity of its arguments, is decisive.

Nor does § 22 of the Natural Gas Act help petitioners. "Exclusive jurisdiction" is given the federal courts but it is "exclusive" only for suits that may be brought in the federal courts. Exclusiveness is a consequence of having jurisdiction, not the generator of jurisdiction because of which state courts are excluded. This was settled long ago in *Pratt v. Paris Gas Light & Coke Co.*, 168 U. S. 255, a case involving a grant of exclusive jurisdiction to the federal courts in all cases arising under the patent laws. Suit was brought in a state court on a common-law contract claim. The complaint contained no mention of a patent, but the invalidity of certain patents was set up in defense. In response to the argument that this deprived the state courts of jurisdiction, the Court said:

"Section 711 [the jurisdictional provision] does not deprive the state courts of the power to determine questions arising under the patent laws, but only of assuming jurisdiction of 'cases' arising under those laws. There is a clear distinction between a case and a question arising under the patent laws. The former arises when the plaintiff in his opening plead-

ing—be it a bill, complaint or declaration—sets up a right under the patent laws as ground for a recovery. Of such the state courts have no jurisdiction. The latter may appear in the plea or answer or in the testimony. The determination of such question is not beyond the competency of the state tribunals.” (Emphasis in the original.) 168 U. S., at 259.²

Petitioners contend that to permit the state courts to entertain the suits brought by Cities Service will jeopardize the uniform system of regulation that Congress established through the Natural Gas Act. Apart from other considerations that dispel such fears, it should be remembered that the route to review by this Court is open to parties aggrieved by adverse state-court decisions of federal questions. In *Great Northern R. Co. v. Merchants Elevator Co.*, 259 U. S. 285, the question before the Court was whether not merely the state courts but any court had jurisdiction to construe a tariff prior to consideration of the disputed question of construction by the Interstate Commerce Commission. It was argued in that case, as it is argued here, that to permit entry into the courts, without initial resort to the Commission, would destroy essential uniformity. The answer there given by Mr. Justice Brandeis, speaking for the Court, applies here:

“This argument is unsound. It is true that uniformity is the paramount purpose of the Commerce Act. But it is not true that uniformity in construc-

² The foregoing conclusions are not affected by want of explicit limitation to jurisdiction “arising under” the Natural Gas Act. Such limitation is clearly implied, as the authoritative Committee Reports indicate. “This section [referring to § 22] imposes appropriate jurisdiction upon the courts of the United States over cases arising under the act.” H. R. Rep. No. 709, p. 9, 75th Cong., 1st Sess.; S. Rep. No. 1162, p. 7, 75th Cong., 1st Sess.

10 PAN AMERICAN PETROLEUM v. DELAWARE.

tion of a tariff can be attained only through a preliminary resort to the Commission to settle the construction in dispute. Every question of the construction of a tariff is deemed a question of law; and where the question concerns an interstate tariff it is one of federal law. If the parties properly preserve their rights, a construction given by any court, whether it be federal or state, may ultimately be reviewed by this court either on writ of error or on writ of certiorari; and thereby uniformity in construction may be secured. Hence, the attainment of uniformity does not require that in every case where the construction of a tariff is in dispute, there shall be a preliminary resort to the Commission." 259 U. S., at 290-291.

We hold that the state courts of Delaware do have jurisdiction to hear and decide the claims that Cities Service has formulated.

Affirmed.